

1|| Kevin E. Gilbert, Esq. (SBN: 209236)  
kgilbert@ohshlaw.com

2 **ORBACH HUFF SUAREZ & HENDERSON LLP**  
1901 Harrison Street, Suite 1630  
3 Oakland, CA 94612  
4 Telephone: 510.999.7908  
Facsimile: 510.999.7918

5 Attorney for Defendants  
6 DETECTIVES MICHAEL ARTEAGA, JEFF CORTINA,  
JOHN MOTTO and JULIAN PERE

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ART TOBIAS,

Plaintiff,

V.

CITY OF LOS ANGELES; SGT. SANCHEZ, #25339; DETECTIVE MICHAEL ARTEAGA, #32722; DETECTIVE JEFF CORTINA, #35632; DETECTIVE J. MOTTO, #25429; DETECTIVE JULIAN PERE, #27434; OFFICER MARSHALL COOLEY, #38940; OFFICER BORN, #38351; L.A. SCHOOL POLICE OFFICER DANIEL EAST, #959; and UNIDENTIFIED EMPLOYEES of the CITY OF LOS ANGELES.

## Defendants.

Case No. 17-cv-01076-DSF-AS

**DEFENDANTS DETECTIVES  
MICHAEL ARTEAGA, JEFF  
CORTINA, JOHN MOTTO AND  
JULIAN PERE'S ANSWER TO  
PLAINTIFF ART TOBIAS' FIRST  
AMENDED COMPLAINT**

1 COMES NOW, Defendants DETECTIVES MICHAEL ARTEAGA, JEFF  
2 CORTINA, JOHN MOTTO and JULIAN PERE (hereinafter “Defendants”) and who  
3 answer Plaintiff ART TOBIAS’ First Amended Complaint as follows:

4 **INTRODUCTION**

5 1. In answer to this paragraph, Defendants deny the allegations therein.  
6 2. In answer to this paragraph, Defendants lack sufficient information to admit  
7 or deny the allegations therein and, on that basis, said allegations are denied.  
8 3. In answer to this paragraph, Defendants deny the allegations therein.  
9 4. In answer to this paragraph, Defendants deny the allegations therein.  
10 5. In answer to this paragraph, Defendants deny the allegations therein.  
11 6. In answer to this paragraph, Defendants deny the allegations therein.

12 **JURISDICTION AND VENUE**

13 7. In answer to this paragraph, Defendants admit that jurisdiction is proper in  
14 this Court but deny all other allegations therein.

15 **THE PARTIES**

16 8. In answer to this paragraph, Defendants lack sufficient information to admit  
17 or deny the allegations therein and, on that basis, said allegations are denied.

18 9. In answer to this paragraph, Defendants admit that Detectives Arteaga,  
19 Cortina, Motto and Pere were all employed and serving as Los Angeles Police  
20 Department officers at all relevant times. As to all other allegations therein, Defendants  
21 lack sufficient information to admit or deny the allegations therein and, on that basis, said  
22 allegations are denied.

23 10. In answer to this paragraph, Defendants lack sufficient information to admit  
24 or deny the allegations therein and, on that basis, said allegations are denied.

25 11. In answer to this paragraph, Defendants admit that Detectives Arteaga,  
26 Cortina, Motto and Pere were all employed and serving as Los Angeles Police  
27 Department officers at all relevant times. As to all other allegations therein, Defendants  
28

1 lack sufficient information to admit or deny the allegations therein and, on that basis, said  
2 allegations are denied.

3 **THE ALVARADO TERRACE SHOOTING**

4 12. In answer to this paragraph, Defendants lack sufficient information to admit  
5 or deny the allegations therein and, on that basis, said allegations are denied.

6 13. In answer to this paragraph, Defendants lack sufficient information to admit  
7 or deny the allegations therein and, on that basis, said allegations are denied.

8 14. In answer to this paragraph, Defendants lack sufficient information to admit  
9 or deny the allegations therein and, on that basis, said allegations are denied.

10 15. In answer to this paragraph, Defendants lack sufficient information to admit  
11 or deny the allegations therein and, on that basis, said allegations are denied.

12 16. In answer to this paragraph, Defendants lack sufficient information to admit  
13 or deny the allegations therein and, on that basis, said allegations are denied.

14 17. In answer to this paragraph, Defendants lack sufficient information to admit  
15 or deny the allegations therein and, on that basis, said allegations are denied.

16 18. In answer to this paragraph, Defendants lack sufficient information to admit  
17 or deny the allegations therein and, on that basis, said allegations are denied.

18 19. In answer to this paragraph, Defendants lack sufficient information to admit  
19 or deny the allegations therein and, on that basis, said allegations are denied.

20 20. In answer to this paragraph, Defendants deny the allegations therein.

21 **DETECTIVES DECIDE TO PROSECUTE PLAINTIFF RATHER THAN**  
22 **CONDUCT AN HONEST INVESTIGATION**

23 21. In answer to this paragraph, Defendants admit the allegations therein.

24 22. In answer to this paragraph, Defendants admit the allegations therein.

25 23. In answer to this paragraph, Defendants lack sufficient information to admit  
26 or deny the allegations therein and, on that basis, said allegations are denied.

27 24. In answer to this paragraph, Defendants lack sufficient information to admit  
28 or deny the allegations therein and, on that basis, said allegations are denied.

25. In answer to this paragraph, Defendants lack sufficient information to admit or deny the allegations therein and, on that basis, said allegations are denied.

26. In answer to this paragraph, Defendants lack sufficient information to admit or deny the allegations therein and, on that basis, said allegations are denied.

27. In answer to this paragraph, Defendants deny the allegations therein.

28. In answer to this paragraph, Defendants deny the allegations therein.

29. In answer to this paragraph, Defendants deny the allegations therein.

30. In answer to this paragraph, Defendants deny the allegations therein.

31. In answer to this paragraph, Defendants deny the allegations therein.

## DEFENDANTS GENERATE FALSE “IDENTIFICATIONS” FROM AMONGST EACH OTHER

32. In answer to this paragraph, Defendants deny the allegations therein.

33. In answer to this paragraph, Defendants deny the allegations therein.

34. In answer to this paragraph, Defendants deny the allegations therein.

35. In answer to this paragraph, Defendants deny the allegations therein.

36. In answer to this paragraph, Defendants deny the allegations therein.

37. In answer to this paragraph, Defendants deny the allegations therein.

38. In answer to this paragraph, Defendants deny the allegations therein.

39. In answer to this paragraph, Defendants deny the allegations therein.

40. In answer to this paragraph, Defendants deny the allegations therein.

41. In answer to this paragraph, Defendants deny the allegations therein.

42. In answer to this paragraph, Defendants deny the allegations therein.

43. In answer to this paragraph, Defendants deny the allegations therein.

44. In answer to this paragraph, Defendants deny the allegations therein.

45. In answer to this paragraph, Defendants deny the allegations therein.

46. In answer to this paragraph, Defendants deny the allegations therein.

111

## PLAINTIFF'S ARREST

48. In answer to this paragraph, Defendants lack sufficient information to admit or deny the allegations therein and, on that basis, said allegations are denied.

49. In answer to this paragraph, Defendants deny the allegations therein.

50. In answer to this paragraph, Defendants deny the allegations therein.

51. In answer to this paragraph, Defendants deny the allegations therein.

52. In answer to this paragraph, Defendants deny the allegations therein.

53. In answer to this paragraph, Defendants deny the allegations therein.

54. In answer to this paragraph, Defendants deny the allegations therein.

55. In answer to this paragraph, Defendants deny the allegations therein.

56. In answer to this paragraph, Defendants lack sufficient information to admit or deny the allegations therein and, on that basis, said allegations are denied.

# THE RECORDING OF PLAINTIFF'S CONFESSION

57. In answer to this paragraph, Defendants lack sufficient information to admit or deny the allegations therein and, on that basis, said allegations are denied.

58 In answer to this paragraph, Defendants deny the allegations therein.

59. In answer to this paragraph, Defendants deny the allegations therein.

60. In answer to this paragraph, Defendants deny the allegations therein.

61. In answer to this paragraph, Defendants deny the allegations therein.

62. In answer to this paragraph, Defendants deny the allegations therein.

# INTERROGATION PART 1: DEFENDANTS BEGIN BY VIOLATING PLAINTIFF'S RIGHTS

63. In answer to this paragraph, Defendants deny the allegations therein.

64. In answer to this paragraph, Defendants deny the allegations therein.

65. In answer to this paragraph, Defendants deny the allegations therein.

66. In answer to this paragraph, Defendants deny the allegations therein.

67. In answer to this paragraph, Defendants deny the allegations therein.

68. In answer to this paragraph, Defendants deny the allegations therein.

1 69. In answer to this paragraph, Defendants deny the allegations therein.  
2 70. In answer to this paragraph, Defendants deny the allegations therein.  
3 71. In answer to this paragraph, Defendants deny the allegations therein.  
4 72. In answer to this paragraph, Defendants deny the allegations therein.  
5 73. In answer to this paragraph, Defendants deny the allegations therein.  
6 74. In answer to this paragraph, Defendants deny the allegations therein.  
7 75. In answer to this paragraph, Defendants deny the allegations therein.  
8 76. In answer to this paragraph, Defendants deny the allegations therein.  
9 77. In answer to this paragraph, Defendants deny the allegations therein.  
10 78. In answer to this paragraph, Defendants deny the allegations therein.  
11 79. In answer to this paragraph, Defendants deny the allegations therein.  
12 80. In answer to this paragraph, Defendants deny the allegations therein.  
13 81. In answer to this paragraph, Defendants deny the allegations therein.  
14 82. In answer to this paragraph, Defendants deny the allegations therein.

15 **INTERROGATION PART 2: DEFENDANTS' REFUSE TO FOLLOW THE  
16 LAW AND VIOLATE PLAINTIFF'S CONSTITUTIONAL RIGHTS**

17 83. In answer to this paragraph, Defendants deny the allegations therein.  
18 84. In answer to this paragraph, Defendants deny the allegations therein.  
19 85. In answer to this paragraph, Defendants deny the allegations therein.  
20 86. In answer to this paragraph, Defendants deny the allegations therein.  
21 87. In answer to this paragraph, Defendants deny the allegations therein.  
22 88. In answer to this paragraph, Defendants deny the allegations therein.  
23 89. In answer to this paragraph, Defendants deny the allegations therein.  
24 90. In answer to this paragraph, Defendants deny the allegations therein.  
25 91. In answer to this paragraph, Defendants deny the allegations therein.  
26 92. In answer to this paragraph, Defendants deny the allegations therein.  
27 93. In answer to this paragraph, Defendants deny the allegations therein.  
28 94. In answer to this paragraph, Defendants deny the allegations therein.

1 95. In answer to this paragraph, Defendants deny the allegations therein.

2 96. In answer to this paragraph, Defendants deny the allegations therein.

3 97. In answer to this paragraph, Defendants deny the allegations therein.

4 98. In answer to this paragraph, Defendants deny the allegations therein.

5 **INTERROGATION PART 3: PLAINTIFF SPECIFICALLY INVOKES HIS**  
6 **RIGHT TO AN ATTORNEY, UNLAWFUL QUESTIONING CONTINUES**

7 99. In answer to this paragraph, Defendants deny the allegations therein.

8 100. In answer to this paragraph, Defendants deny the allegations therein.

9 101. In answer to this paragraph, Defendants deny the allegations therein.

10 102. In answer to this paragraph, Defendants deny the allegations therein.

11 103. In answer to this paragraph, Defendants deny the allegations therein.

12 **INTERROGATION PART 4: DEFENDANT ARTEAGA'S UNCONSCIONABLE**  
13 **CONDUCT**

14 104. In answer to this paragraph, Defendants deny the allegations therein.

15 105. In answer to this paragraph, Defendants deny the allegations therein.

16 106. In answer to this paragraph, Defendants deny the allegations therein.

17 107. In answer to this paragraph, Defendants deny the allegations therein.

18 108. In answer to this paragraph, Defendants deny the allegations therein.

19 109. In answer to this paragraph, Defendants deny the allegations therein.

20 110. In answer to this paragraph, Defendants deny the allegations therein.

21 111. In answer to this paragraph, Defendants deny the allegations therein.

22 112. In answer to this paragraph, Defendants deny the allegations therein.

23 113. In answer to this paragraph, Defendants deny the allegations therein.

24 **PLAINTIFF'S FABRICATED, FALSE & COERCED CONFESSION**

25 114. In answer to this paragraph, Defendants deny the allegations therein.

26 115. In answer to this paragraph, Defendants deny the allegations therein.

27 116. In answer to this paragraph, Defendants deny the allegations therein.

28 117. In answer to this paragraph, Defendants deny the allegations therein.

# **WRONGFUL PROSECUTION AND CONVICTION**

118. In answer to this paragraph, Defendants deny the allegations therein.
119. In answer to this paragraph, Defendants deny the allegations therein.
120. In answer to this paragraph, Defendants deny the allegations therein.
121. In answer to this paragraph, Defendants deny the allegations therein.
122. In answer to this paragraph, Defendants deny the allegations therein.
123. In answer to this paragraph, Defendants deny the allegations therein.
124. In answer to this paragraph, Defendants deny the allegations therein.

# PLAINTIFF'S CONVICTION IS OVERTURNED

125. In answer to this paragraph, Defendants deny the allegations therein.

126. In answer to this paragraph, Defendants assert that such allegations are immaterial, impertinent and even scandalous and, therefore, no response is required.

(*Survivor Productions LLC v. Fox Broadcasting Co.*, 2001 U.S. Dist. LEXIS 25512, \*7-8

(CD. Cal. June 11, 2001); *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1529 (9th Cir. 1993).)

To the extent a further response is required, Defendants deny the allegations therein.

127. In answer to this paragraph, Defendants assert that such allegations are

immaterial, impertinent and even scandalous and, therefore, no response is required.

(Survivor Productions LLC v. Fox Broadcasting Co., 2001 U.S. Dist. LEXIS 25512, \*7-8

(CD. Cal. June 11, 2001); *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1529 (9th Cir. 199

## THE CITY OF LOS ANGELES' COERCER CONFESSION PROBLEM

128. In answer to this paragraph, Defendants deny the allegations therein.
129. In answer to this paragraph, Defendants deny the allegations therein.
130. In answer to this paragraph, Defendants deny the allegations therein.
131. In answer to this paragraph, Defendants deny the allegations therein.
132. In answer to this paragraph, Defendants deny the allegations therein.
133. In answer to this paragraph, Defendants deny the allegations therein.
134. In answer to this paragraph, Defendants deny the allegations therein.

- 1 135. In answer to this paragraph, Defendants deny the allegations therein.
- 2 136. In answer to this paragraph, Defendants deny the allegations therein.
- 3 137. In answer to this paragraph, Defendants deny the allegations therein.
- 4 138. In answer to this paragraph, Defendants deny the allegations therein.
- 5 139. In answer to this paragraph, Defendants deny the allegations therein.

6 **PLAINTIFF'S DAMAGES**

- 7 140. In answer to this paragraph, Defendants deny the allegations therein.
- 8 141. In answer to this paragraph, Defendants deny the allegations therein.
- 9 142. In answer to this paragraph, Defendants deny the allegations therein.

10 **COUNT I – Federal Law**

11 **Fifth & Fourteenth Amendments (Self-Incrimination, Right to Counsel)**

- 12 143. In answer to this paragraph, Defendants reincorporate the responses to all
- 13 prior paragraphs as though set forth herein.
- 14 144. In answer to this paragraph, Defendants deny the allegations therein.
- 15 145. In answer to this paragraph, Defendants deny the allegations therein.
- 16 146. In answer to this paragraph, Defendants deny the allegations therein.
- 17 147. In answer to this paragraph, Defendants deny the allegations therein.
- 18 148. In answer to this paragraph, Defendants deny the allegations therein.
- 19 149. In answer to this paragraph, Defendants deny the allegations therein.

20 **COUNT II – Federal Law**

21 **Fourteenth Amendment (Due Process)**

- 22 150. In answer to this paragraph, Defendants reincorporate the responses to all
- 23 prior paragraphs as though set forth herein.
- 24 151. In answer to this paragraph, Defendants deny the allegations therein.
- 25 152. In answer to this paragraph, Defendants deny the allegations therein.
- 26 153. In answer to this paragraph, Defendants deny the allegations therein.
- 27 154. In answer to this paragraph, Defendants deny the allegations therein.
- 28 155. In answer to this paragraph, Defendants deny the allegations therein.

## COUNT III – Federal Law

## Fifth & Fourteenth Amendments (Due Process, Fair Trial)

156. In answer to this paragraph, Defendants reincorporate the responses to all prior paragraphs as though set forth herein.

157. In answer to this paragraph, Defendants deny the allegations therein.

158. In answer to this paragraph, Defendants deny the allegations therein.

159. In answer to this paragraph, Defendants deny the allegations therein.

160. In answer to this paragraph, Defendants deny the allegations therein.

161. In answer to this paragraph, Defendants deny the allegations therein.

162. In answer to this paragraph, Defendants deny the allegations therein.

## COUNT IV – Federal Law

# Malicious Prosecution

163. In answer to this paragraph, Defendants reincorporate the responses to all prior paragraphs as though set forth herein.

164. In answer to this paragraph, Defendants deny the allegations therein.

165. In answer to this paragraph, Defendants deny the allegations therein.

166. In answer to this paragraph, Defendants deny the allegations therein.

167. In answer to this paragraph, Defendants deny the allegations therein.

168. In answer to this paragraph, Defendants deny the allegations therein.

169. In answer to this paragraph, Defendants deny the allegations therein.

## **COUNT VI – 42 U.S.C. § 1983**

## Failure to Intervene

170. In answer to this paragraph, Defendants reincorporate the responses to all prior paragraphs as though set forth herein.

171. In answer to this paragraph, Defendants deny the allegations therein.

172. In answer to this paragraph, Defendants deny the allegations therein.

173. In answer to this paragraph, Defendants deny the allegations therein.

111

## COUNT VII – 42 U.S.C. § 1983

# Conspiracy to Deprive Constitutional Rights

174. In answer to this paragraph, Defendants reincorporate the responses to all prior paragraphs as though set forth herein.

175. In answer to this paragraph, Defendants deny the allegations therein.

176. In answer to this paragraph, Defendants deny the allegations therein.

177. In answer to this paragraph, Defendants deny the allegations therein.

178. In answer to this paragraph, Defendants deny the allegations therein.

179. In answer to this paragraph, Defendants deny the allegations therein.

180. In answer to this paragraph, Defendants deny the allegations therein.

## COUNT VIII – 42 U.S.C. § 1983

## *Monell Policy Claims*

181. In answer to this paragraph, Defendants reincorporate the responses to all prior paragraphs as though set forth herein.

182. In answer to this paragraph, Defendants deny the allegations therein.

183. In answer to this paragraph, Defendants deny the allegations therein.

184. In answer to this paragraph, Defendants deny the allegations therein.

185. In answer to this paragraph, Defendants deny the allegations therein.

## **COUNT IX – State Law Claim**

## Malicious Prosecution

In response to paragraphs 186-193, no response is necessary from Defendants since said allegations and claims were previously dismissed by the Order Granting in Part Defendants' Motion to Dismiss (Docket 33). To the extent any response is required, Defendants deny the allegations therein.

## **COUNT X – State Law Claim**

## **Intentional Infliction of Emotional Distress**

In response to paragraphs 194-197, no response is necessary from Defendants since said allegations and claims were previously dismissed by the Order Granting in Part

1 Defendants' Motion to Dismiss (Docket 33). To the extent any response is required,  
2 Defendants deny the allegations therein.

3 **COUNT XI – State Law Claim**

4 **False Imprisonment**

5 In response to paragraphs 198-202, no response is necessary from Defendants  
6 since said allegations and claims were previously dismissed by the Order Granting in Part  
7 Defendants' Motion to Dismiss (Docket 33). To the extent any response is required,  
8 Defendants deny the allegations therein.

9 **COUNT XII – State Law Claim**

10 **Civil Conspiracy**

11 In response to paragraphs 203-208, no response is necessary from Defendants  
12 since said allegations and claims were previously dismissed by the Order Granting in Part  
13 Defendants' Motion to Dismiss (Docket 33). To the extent any response is required,  
14 Defendants deny the allegations therein.

15 **COUNT XIII – State Law Claim**

16 **Respondeat Superior**

17 In response to paragraphs 209-212, no response is necessary from Defendants  
18 since said allegations and claims were previously dismissed by the Order Granting in Part  
19 Defendants' Motion to Dismiss (Docket 33). To the extent any response is required,  
20 Defendants deny the allegations therein.

21 **COUNT XIV – State Law Claim**

22 **Indemnification**

23 In response to paragraphs 213-216, no response is necessary from Defendants  
24 since said allegations and claims were previously dismissed by the Order Granting in Part  
25 Defendants' Motion to Dismiss (Docket 33). To the extent any response is required,  
26 Defendants deny the allegations therein.

27 **JURY DEMAND**

28 Defendants demand a jury trial.

## AFFIRMATIVE DEFENSES

As a separate and distinct affirmative defense, Defendants allege each of the following:

## FIRST AFFIRMATIVE DEFENSE

As to the federal claims and theories of recovery, these answering Defendants are protected from liability under the doctrine of qualified immunity, because Defendants' conduct did not violate clearly established statutory or constitutional rights of which a reasonable person would have known.

## SECOND AFFIRMATIVE DEFENSE

The damages alleged were directly and proximately caused and contributed to by the negligence of the Plaintiff, and the extent of damages sustained, if any, should be reduced in proportion to the amount of said negligence.

## THIRD AFFIRMATIVE DEFENSE

The damages alleged were directly and proximately caused and contributed to by the negligence of other persons, and the extent of damages sustained, if any, should be reduced in proportion to the amount of said negligence.

## FOURTH AFFIRMATIVE DEFENSE

Defendants are immune from the claims contained in the First Amended Complaint pursuant to the provisions of California Penal Code section 836.

## FIFTH AFFIRMATIVE DEFENSE

Defendants are informed and believe and thereby allege that Plaintiff's alleged injuries or damages, if any there were, were aggravated by the failure of Plaintiff and/or others (named or unnamed in the First Amended Complaint) to use reasonable diligence to mitigate those injuries or damages.

## SIXTH AFFIRMATIVE DEFENSE

Defendant are immune from liability pursuant to the provisions of each of the following California statutes, each of which is set forth as a separate and distinct affirmative defense: Government Code §§ 815.2, 818.8, 820.2, 820.25, 820.4, 820.6,

1 820.8, 822.2, 845.6, 845.8, 846, 850.8, 855.6, 856.4, 29631 and 29632; Penal Code §  
2 847.

3 **SEVENTH AFFIRMATIVE DEFENSE**

4 Defendant City of Los Angeles and all Defendants sued in their official capacities  
5 are immune from the imposition of punitive damages.

6 **EIGHTH AFFIRMATIVE DEFENSE**

7 Neither a public entity, nor a public employee, is liable for his/her act or omission,  
8 exercising due care, in the execution or enforcement of any law.

9 **NINTH AFFIRMATIVE DEFENSE**

10 Any injury or damage suffered was due to or caused solely by reason of Plaintiff or  
11 other's wrongful acts and conduct, and not by reason of any wrongful acts or omissions of  
12 Defendants.

13 **TENTH AFFIRMATIVE DEFENSE**

14 If it is found that any Defendant is legally responsible for Plaintiff's claimed  
15 damages, if any, then such damages were proximately caused by or contributed to by  
16 Plaintiff or others, and any judgment must be reduced by that percentage of fault to be  
17 found to exist of Plaintiff or others.

18 **ELEVENTH AFFIRMATIVE DEFENSE**

19 Superseding Cause: Any alleged acts or omissions by Defendants and or their  
20 agents, officers, and/or employees were superseded by the negligence or causative fault  
21 of Plaintiff or others, whether sued herein or not, whose negligence or causative fault  
22 intervened and was the sole cause of any detriment to Plaintiff as alleged in the First  
23 Amended Complaint.

24 **TWELFTH AFFIRMATIVE DEFENSE**

25 Defendants allege that they took reasonable precautions with regard to protecting  
26 against any risk of injury complained of by Plaintiff.

27 ///

28 ///

## THIRTEENTH AFFIRMATIVE DEFENSE

Defendants allege that Plaintiff is barred from maintaining this action by the principle of estoppel.

## FOURTEENTH AFFIRMATIVE DEFENSE

Defendants allege that they were privileged to detain Plaintiff and undertake the complained of actions at the times and place alleged.

## FIFTEENTH AFFIRMATIVE DEFENSE

The action is barred by the doctrine of res judicata.

## SIXTEENTH AFFIRMATIVE DEFENSE

Any state claims are barred for Plaintiff's failure to comply with the provisions of the California Tort Claims Act, Government Code section 910, *et seq.*

## SEVENTEENTH AFFIRMATIVE DEFENSE

Defendants allege that Plaintiff is guilty of willful misconduct which contributed to the happening of the incident which resulted in the alleged injuries or damages.

## EIGHTEENTH AFFIRMATIVE DEFENSE

Defendants allege that Plaintiff's claims for punitive damages are barred by the doctrine enunciated in *City of Newport v. Facts Concerts, Inc.*, 453 U.S. 247 (1981).

## NINETEENTH AFFIRMATIVE DEFENSE

Defendants are immune from liability for all damages sustained after the prosecutor initiated criminal charges, pursuant to *Smiddy v. Varney*, 803 F.3d 1469 (9th Cir. 1986), *Jackson v. City of San Diego*, 121 Cal.App.3d 579 (1981) and *McSherry v. City of Long Beach, et al.*

## **TWENTIETH AFFIRMATIVE DEFENSE**

Defendants are protected from liability under the doctrine of witness immunity. *Brisco v. LaHue*, 460 U.S. 325 (1983).

111

111

111

## PRAYER

WHEREFORE, Defendants pray for judgment as follows:

1. That Plaintiff take nothing by reason of his First Amended Complaint;
2. That judgment be entered in favor of Defendants;
3. That Defendants be awarded costs of suit; and
4. That Defendants be awarded other and further relief as the Court may deem proper, including an award of attorneys' fees pursuant to 42 U.S.C. § 1988.

Dated: August 14, 2017 Respectfully submitted,

## ORBACH HUFF SUAREZ & HENDERSON LLP

By: /s/ Kevin E. Gilbert

Kevin E. Gilbert

Attorney for Defendants

DETECTIVES MICHAEL ARTEAGA, JEFF CORTINA, JOHN MOTTO and JULIAN PERE